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DEC 06 2012

**OFFICE OF PETITIONS**

In re Application of :  
Lavian et al. :  
Application No. 09/747,296 :  
Filed: December 22, 2000 :  
Attorney Docket No. 120-081 :  
For: DYNAMIC ASSIGNMENT OF  
TRAFFIC CLASSES TO A PRIORITY  
QUEUE IN A PACKET FORWARDING  
DEVICE

ON PETITION

This is a decision on the petition for reconsideration of holding of abandonment, which will be treated as a feeless petition under 37 CFR 1.181, and the petition filed in the alternative, under 37 CFR 1.137(b), for revival of the application. Both petitions were filed in the same paper on November 1, 2012.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

This application was held abandoned for failure to timely seek court review of the Board of Patent Appeals and Interferences Decision on Appeal, mailed September 4, 2012. A Notice of Abandonment was mailed on October 5, 2012.

Petitioners argue that the application did not become abandoned because a RCE and amendment were filed on November 1, 2012, which was within the two month period for action. The correspondence is present in the application file.

The filing of a RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action, will result in the finality of the rejection or action being withdrawn and the submission being considered. Pursuant to 37 CFR 1.114, a RCE and amendment with amended claims is a proper follow-up submission, if made within two months of the Board decision.

The petition under 37 CFR 1.181 is granted and the Notice of Abandonment is vacated. No petition fee will be charged in connection with this matter. As the petition under 37 CFR

1.137(b) is dismissed as moot, the \$1,890.00 petition fee filed on November 1, 2012 will be refunded to petitioners' deposit account.

Accordingly, the application file will be forwarded to Technology Center A.U. 2411 for consideration of the RCE and amendment timely filed on November 1, 2012.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

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